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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/027,670 02/23/98 RIVIERE J 5051-1118

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EXAMINER

ASTORINO, M

ART UNIT

PAPER NUMBER

3736

DATE MAILED:

03/31/99

03/31/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/027,670

Applicant(s)

Riviere et al.

Examiner

Michael Astorino

Group Art Unit

3736

☒ Responsive to communication(s) filed on Feb 23, 1998

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(e).

Disposition of Claims

☒ Claim(s) 1-50 is/are pending in the application.

Of the above, claim(s) 35-50 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-5, 8, 12, 18-22, 28, 31, and 34 is/are rejected.

☒ Claim(s) 6, 7, 9-11, 13-17, 23-27, 29, 30, 32, and 33 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(e)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-34, drawn to method for estimating a withdrawal interval performed in a data processing system, classified in class 600, subclass 300.
- II. Claims 35-50, drawn to a computer program product for estimating a withdrawal interval, classified in class 128, subclass 920.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions a data base is a separate invention from a computer program.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Kenneth Sibley on 3/23/99 a provisional election was made with traverse to prosecute the invention of II, claims 1-34. Affirmation of this election must be made by applicant in replying to this Office action. Claims 35-50 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable in view of well known pharmaceuticals having recommended dosages.

It is the examiner's position that the method disclosed in claim 1 and data processing system discloses in claim 19, would have been obvious to one in the art at the time of the invention. On each compound/drug sold there are proper instructions of use, stating the frequency of using the compound/drug. Hence the estimation of a withdrawal interval would be inherent in the directions of use. Furthermore it is obvious that in the manufacturers directions of use the compound/drug would entail safe/ FDA approved directions for food-producing animals.

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3. Claims 1-5, 8, 12, 18-22, 28, 31 and 34, are rejected under 35 U.S.C. 103(a) as being unpatentable over Concordet et al. (The Withdrawal Time Estimation of Veterinary Drugs Revisited) over Dept. of Health and Human Services (General Principals for Evaluating the Safety of Compounds used in Food-Producing Animals).

In regards to claims 1-5, 8, 12, 18-22, 28, 31 and 34, Concordet et al. (The Withdrawal Time Estimation of Veterinary Drugs Revisited) discloses a withdrawal interval estimation of veterinary drugs extrapolated from the tolerance concentration, withdrawal time and prior dose (see entire document) but does not disclose the use of half-life data and a data processing system. Dept. of Health and Human Services (General Principals for Evaluating the Safety of Compounds used in Food-Producing Animals) discloses the use of Carbon 14 (half-life dating on page I-2), however does not disclose the method being performed by an data processing system. It would have been obvious to one in the art at the time of the invention to combine the methods of Concordet et al. (The Withdrawal Time Estimation of Veterinary Drugs Revisited) and Dept. of Health and Human Services General Principals for Evaluating the Safety of Compounds used in Food-Producing Animals) to maintain an efficient system of estimating withdrawal interval time.

In regards to claims 3-4 and 21-22, Concordet et al. (The Withdrawal Time Estimation of Veterinary Drugs Revisited) discloses the extrapolating step is carried out by the depletion rate constant and using of the 99th percentile of the population (page 381) for adjusting dosage.

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Allowable Subject Matter

4. Claims 6-7, 9-11, 13-17, 23-27, 29-30, 32-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. O'Connor ('995)

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Astorino whose telephone number is (703) 306-9067.



M. Astorino

March 25, 1999

Cary O'Connor
CARY O'CONNOR
SUPERVISORY PATENT EXAMINER
GROUP 3700